(1)

Supreme Court, U.S.
FILED

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

KERRY D. FRITZ II - PETITIONER

V.

LANCASTER COUNTY, et al. - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE THIRD

CIRCUIT

PETITION FOR WRIT OF CERTIORARI

KERRY D. FRITZ II

P.O.B. # 503

LANCASTER, PA. 17608

(717) 664-3996

14 PP

QUESTIONS PRESENTED

1 - Would have the Appellant been able to conduct himself in the 'state action' proceedings from which the cause of action arose, in the manner which the non-objecting, non-entering appearance, or non cross-appealing parties have in the C.A.3d and the courts-below?

2 - Did the Appellant make one motion for extension of time per 'category' of defendant, pursuant to Fed.R.Civ.P. # 11's 21-day safe-harbor requirement instead of 'several motions for an extension or enlargement of time'?

3 - Did the Panel address the failure to defend C.A.3d Cir. # 96-2074?

4 - In the context of motions to dismiss the Complaint - was a proper standard of review given by the E.D.Pa. or the 3d Cir. Panel, or should have it been under a plenary standard?

5 - In the context of Fed.R.Civ.P. 11 (b) (1), should have the 3d Cir. Panel used a de novo standard of review?

6 - Would the subsequent disability or otherwise of the past two judges at the district level be another factor to take into consideration?

LIST OF PARTIES

Kerry D. Fritz II, Petitioner. Lancaster County, United Ministries in Higher Education, United Campus Ministries, Rev. Robert Sayre, Lt. Robert Pletcher, Dr. Gary Reighard, Respondents.

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STATUTES INVOLVED

The pertinent equal protection question involves Pa.C.S.A. Title 18 § 2709 (d) - relating to false reports.

The pertinent present question is 34 C.F.R. Part 73's Appendix's admonitions pertaining to 'uphold' as well as not to 'evade'.

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OPINIONS BELOW

The opinion of the Court of Appeals Panel for the Third Circuit on the final and three of the four interlocutory appeals appears in the Appendix at p. 1 A, with decisions of the E.D.Pa. District Court Judge appearing at pages 12 A through 40 A.

STATEMENT OF JURISDICTION

A timely petition for rehearing was denied by the United States Court of Appeals on June 29, 1998, and a copy of the order denying rehearing appears at Appendix p. 106 A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1), inter alia such as 28 U.S.C. § 1651 and 28 U.S.C. § 2403 (b).

STATEMENT OF THE CASE

The Plaintiff-Appellant attempted to 'file a grievance' against an inverted female Millersville University Police Officer.

Since there was not going to be any charges filed (see M.U.Police Incident Report # 94-0176 at last line of p. 2), the University officials in charge of addressing such grievances either sent the Plaintiff-appellant to other officials or, otherwise refused to discuss the matter.

The plaintiff called a local 'mediation center' in an attempt to set-up a 'round-table' discussion. Here again, the police officer in question's supervisor refused since there was no charges going to filed.

The next day, a campus minister whom the Plaintiff had contacted the day before to invite to attend the proposed

'round-table' discussion, divulged a twisted account of both the conversation of the day prior, as well as a pastoral and/or psychologist-setting conversation occurring more than four years prior to this incident.

This dual private and state actor preacher/psychologist/state-employee also used professional 'terms of art' which the Plaintiff-appellant did not know the meanings of, representing to the Chief of Police (Silcox) that Fritz had stated them.

The next day, Wednesday, when the Plaintiff-appellant refused to make a statement against the girl involved, two summary charge 'harassment' (Pa.C.S.A. Title 18 § 2709 (a) (2), (3) citations were eventually and suddenly sent to the Plaintiff/Appellant/Petitioner after a letter of restriction from campus without a hearing or Plaintiff's knowledge of the

allegations' contents.

After two trials spanning over eight months, the two citations were nolle prossed.

Within 6 months (see Pa.C.S.A. Title 42 § 5522) the Plaintiff filed the first action for redress. These actions are typically referred-to as a 'three-pronged typology claim'. See Buckey v. County of Los Angeles, 957 F.2d 652, n. 3 (9th Cir. 1992); also see Widener Journal of Public Law [Vol. 1, 1992], p.p. 272-299, Zinermon v. Burch - The Court Examines Post-Parratt Procedural Due Process.

Having code-pled all of the officials as 'individual' and 'official capacities' (see p. 82 A & 90-91 A); the Lancaster County officials involved were dismissed due to the former and now disabled District judge's refusal to address the pertinent questions involved

concerning Fed.R.Civ.P. # 24 (c)'s last sentence (constitutionality of the statute in question, 'as applied') where there was either: no allegations by the private individual of 'unwanted'; nor of 'obscenity'; nor of 'threats' (see Model Penal Code §§ 250.2, 250.4), as well as those [false] allegations made by the 'babbling and inconsistent' private person were not investigated for logically impossible circumstances, nor 6th Amendment requisite discovery given to be able to make the Plaintiff's immunities or innocence more explicit, or; Lancaster County/state's not understanding the 'elements and evidence' for a valid conviction (see e.g. Bates v. McCaughtry, 934 F.2d 99 (1991) (discussing Jackson v. Virginia, 61 L.Ed.2d 560 in pari materia the 'Winship-Sandstrom-Mullaney' line of cases, as well as Model Penal Code §§ 250.2, 250.4).

The procedures and allegations 'shocked' the plaintiff, for which he lost a credit-rating due to student loans defaulting during the time he was not allowed on campus between the two trials, as well as the fact that he had to seek out-patient mental health counseling due to those procedures and allegations, starting just after the first [4/15/94] trial, and continuing until eight months after the nolle prosse, which is also three months after he filed the first case.

After repeated attempts either to get the E.D.Pa. judge to address the Plaintiff's Fed.R.Civ.P. # 12 (f), (h) motions, 'official capacity' of Lancaster County defendants, or later; to get the now disabled judge to allow an amendment to the complaint to make the pleadings even more explicit after a minimum of discovery, or to add at trial; the

Plaintiff finally was 'needlessly remitted to starting a new action'. Fed.R.Civ.P. # 15 (1996 & 1991 Amendments); also see Fed.R.Civ.P. #'s 18, 19 & 20.

This occurred within 10 days of the last denial and 4 months prior to summary judgment decision at docket entry # 99 in that case, where a new district judge had received the first and subsequently, the second [present] case after the first judge became disabled.

This second judge merely continued the actions/non-actions of the first judge. See S. Ct. # 97-1154. See Edwards v. Cabrera, 861 F. Supp. 664-680 (1994)) (discussing 'bootstrap operation'- 'tip itself cannot be used to assert that it had been corroborated) see also Investigator - Inspector, National Learning Corporation, C-378, Career Examination Series, c19??.; Law Enforcement Exams Handbook, by E.P.

Steinberg, c1993 Arco. - within FRAP 28 (j) filing) (discussing classifications of age-group [un]reliability to merely watch a 21-year-old girl sign an inherently contradictory statement which was also different from the oral statement the night prior to the written statement); and/or the preacher/psychologist in the posture of the 'bus driver' in Edwards cited above as well as was sanctionable conduct for merely conclusory assertions (Summary Judgment Motions, 139 F.R.D. 441 (discussion of plethora of sanctionable-conduct parallel to that of defense counsels) and not applying the Fed.R.Evid. in a manner that prior case-law, and the Committee Notes obligate. See '95 action' at doc. ent. #'s 81 & 89.

It should be noted that a judicial complaint (3d Cir. J.C. # 96-54) was filed against the second judge when the first case was at the 3d Cir. C.A.

Intertwined with the merits-relatedness was the disregarding the 'Franks probable cause affidavit-correction' evidence (see e.g. Mulligan v. Rioux, 643 A.2d 1226-1253 (1994)), as well as for some unknown reason constructing the 'Complaint' outside the parameters of 'well-established' law (see p. 86 A - '361 pages'), or disregarding the Fed.R.Evid. and allowing 'sanctionable conduct' on the part of the opposing attorney left in the case; termed in that J.C. # 96-54 Complaint as a thinking 'disability' in pari materia case-law, and logic.

Instead of 'corrective action', that District Judge was promoted to the 3d Cir. C.A. level. Compare, therefore: an implicit/tacit admission made, in conformity with n. # 343 within Summary Judgment Motions, 139 F.R.D. 441, at 505, that: the judge subject to whose actions

were purported to be reviewed - was not a 'fact specialist'.

No standard of review was given by the Third Circuit panel in that prior [E.D.Pa. 95-cv-1409] case (see p. 45 A),

The FRAP 28 (j) filing in that case, which included 'schools of thought' for the 'tedious' issues of the case, was allowed to be discarded from consideration by a 'staff attorney' for the 3d Cir. notwithstanding it was not objected-to by the opposing attorneys (see C.A.3d Cir. 96-1997).

The 'elucidative' nature of that filing in pari materia 'well-established law' and 'schools of thought' was asked to be reviewed in S. Ct. # 97-1154.

That [S. Ct. # 97-1154] 'Petition for a Writ of Certiorari' was denied by this Court on February 23, 1998. See Fritz v. Bond, 118 S. Ct. 1056 (1998).

Meanwhile, this [present] case was winding its way through the same process, with the District and 3d Cir. Courts never even looking to the allegations in the Complaint or plaintiff-appellant's subsequent writings, as well as the voluminous 'evidence' of Fed.R.Civ.P. # 11 and 'post hoc sleight of hand for empty or misleading presentations in the first instance' violations. See E.D.Pa. # 96-cv-4796 Doc. ent. #'s 46 through 49 and 56 through 59.

The Petitioner's request for hearing on 'original papers'/'original record' was granted by Order of 9/22/97 in both the ['consolidated'] three interlocutory appeals, as well as the final order appealed-from, subsuming C.A.3d Cir. # 96-2074 interlocutory appeal (granted on rehearing).

However, only the opposing attorney's or District Court's distorted

view of the statement of a claim and 'controlling facts' (see Raytech Corp. v. White, 54 F.3d 187, 186-197 (3d Cir. 1995) were 'rubber-stamped', and the 3d Cir. # 96-2074 was never addressed. See p.p. 3 A - 8 A.

Most of the defendants or their attorneys disregarded the process of the Court.

In the various motions for sanctions against opposing counsel, the courts-below admitted a 'dispute', but contradicts itself in not allowing the matter to go to trial by their [other] 'findings'.

Within the 25 day period for rehearing limitations in the [prior] S.Ct. 97-1154 action filed in the District Court on March 10, 1995 ('95 action'), and while the present case was at the 3d Cir. level, the Appellant attempted a Fed.R.Civ.P. # 27 proceeding to 'prevent a failure or

delay of justice'. See p.p. 41 A - 45 A.

The Petitioner has sent some of the information of these two proceedings to allow other agencies responsible for removing federal judges through the impeachment proceedings, to monitor these actions' course of events in case the civil justice system fails, as well as that which is 'required' by Fed.R.Civ.P. 24 (c) as well as other statutes' or rules' provisions.

These latter 'requirements' apparently are not known by the District Judge who ruled on the Fed.R.Civ.P. 27 Miscellaneous Action to perpetuate testimony. See App. p.p. 41 A - 45 A.

REASONS FOR GRANTING THE WRIT

It thus appears that the E.D.Pa. and 3d Cir. will not meaningfully adjudicate a Fed.R.Civ.P. 60 (b) (2), (3), (6) action. See App. p.p. 41 A - 45 A in

pari materia S.Ct. Rules of Procedure, p. 24, 1997 ed. ". . . Neither the denial of the petition, without more, . . . is an adjudication on the merits, and therefore does not preclude further application to another court for the relief sought." (See S.Ct.R.P. # 20.4.b).

The peripheral parties notified, as well as the E.D.Pa. and 3d Cir. judges are required under 34 C.F.R. Part 73's Appendix - Code of Ethics for Government Service (cross-reference to 28 U.S.C.S. § 535 - Standards of Conduct) to 'uphold' [the Constitution, Treaties, and Laws] as well as; forego 'evasion', in pari materia thus far failing to exercise the 14th Amendment's remedial provisions. See 42 U.S.C. §§ 1983, 1988.

The responses from the above-mentioned peripheral agencies are in comportance with Sickafuse v. Com., Unempl. Comp. Bd. of Rev., 464 A.2d 689,

692 (C.C.P. 1983) which cites Shuback v. Silver, 336 A.2d 328 (Pa. 1975) (discussing must have opportunity to actually litigate), but does not know how to rid the Third Cir. or themselves of animus towards pro se litigants.

Liberty Lobby, Inc. v. Anderson, 746 F.2d 1563, 1564-1569 (D.C. App. 1984) deems that [malice] may be proved inferentially - . . ."principle that 10,000 repetitions are as good as the truth [rejected]." See also Id., at 1569, end of n. 6 . . ."none of the repulsive attributes which the appellees imputed to the appellants have been established or conceded to be true, . . ."; also see: "The plaintiff need not obtain an admission of fault from the defendant."

In these 28 U.S.C. § 1331 and 1343 cases it is not so much a problem with the defendants themselves as it is with the opposing attorneys and the

Courts-below. The E.D.Pa. does not even acknowledge the Complaint's allegations concerning 28 U.S.C. § 1331. See App. A compared to Doc. ent. 24.

The defendants whom so far were allowed to be deposed (albeit only in the first action); answered against their own interests if the correct construction of the statement of the claim for relief would be sought. See United States v. Dovico, 380 F.2d 325, 324-329 (1987) (discussing "against interest" at n. # 5).

With respect to the first judge's disposition of the Fed.R.Civ.P. 12 (f), (h) motions in the first case (see p.p. 47 A - 59 A and compare to Fed.R.Civ.P. # 12's 1946 Amendment) and how it affects this case, see, in pari materia S. Ct. # 97-1154 and Fed.R. Civ. P. # 15: Rice v. Hamilton Air Force Base Commandment, 720 F.2d 1082, 1085 n. 2 (9th Cir. 1983) "The Fourth Circuit once

stated: 'A suit at law is not a children's game, but a serious effort on the part of adult human beings to administer justice; and the purpose of process is to bring the parties into court. If it names them in such terms that every intelligent person understands who is meant, as is the case here, it has fulfilled its purpose; and courts should not put themselves in the position of failing to recognize what is apparent to everyone else.' (Cf. United States v. A.H. Fischer Lumber Co., 162 F.2d 872, 873 (4th Cir. 1947). This advice is not without relevance here.)". See App. herein at p. 82 A, but not applied at p.p. 52 A & 56 A.

The Report of Natl. Commn. on Judicial Discipline and Removal, 152 F.R.D. 265, 341 is a pertinent reason for granting the Petition for a Writ of Certiorari or an 'Extraordinary Writ' in that: "The 1980 Act's substantive conduct

standard - 'conduct prejudicial to the effective and expeditious administration of the business of the courts' . . . does not exclude delay as a ground . . . in fact, it seems to incorporate it. . . . or if it (the Order) is so egregious as to constitute a clear dereliction of judicial responsibilities. . . A judge's refusal to decide because, for reasons unrelated to the case, the judge is biased against the litigant, constitutes conduct 'prejudicial to the effective and expeditious administration of the business of the courts.' . . So too does a refusal or persistent failure to decide because a matter is difficult or tedious." Also (at 344) 'There are two other matters implicating the Act's substantive standards that deserves attention. . . " (should include pro se animus), also; (at 363) . . . "The federal judiciary has made substantial progress in adapting to

changing societal expectations regarding . . . judicial misconduct, and judicial disability, including those captured in the 1980 Act and other legislation. Too often, however, . . . There are problems of misconduct and disability in the federal courts, and not all of them are being addressed under current arrangements." . . .(at 367-368) . . . "Basic black-letter law recognizes the need for fairness through an impartial jury. The Supreme Court further described it this way: 'A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. . ."

It should be noted that an inference or presumption arises that: both the 3d Cir. and the opposing attorneys are breaking these various rules of procedure or evidence to keep the Plaintiff-

appellant from getting to trial.

The [other] particulars are too numerous to list in the space confined to herein, and the Orders attempt to insulate themselves from that of the record-evidence by merely conclusorily denying such evidence. See p.p. 21 A - 40 A.

Hence, there is no indication that the matter was heard on the 'original papers'. See Order granting such on 9/22/97. And, it appears that an 'ounce of perception [was met with] a pound of obscur[ity]' (citation omitted). See p.p. 2 A - 107 A.

Who Should Discipline Federal Judges, and How?, 143 F.R.D. 375, at 395, 402, 407, & 414 demands, in seriatim that: ". . . the ideal of judicial independence is not compromised when judges are monitored and even regulated by their peers . . ." (quoting Judge Harry Edwards in pari materia Ch. J. Burger's writing

for the Court in Chandler v. Judicial Council, 398 U.S. 74, 85, 90 S.Ct. 1648, 1654, 26 L.Ed.2d 100 (1970)); (also at 402). . ." see also: "and other abuses of judicial office." (citing Illus. Rule 1 (b).); (at 407) ". . . the matter involved can be raised on appeal or by petition for a writ of mandamus . . . a wide range of things can be raised on appeal or by mandamus, and that forbidding disciplinary action with respect to any of them appears overbroad."; (at 414) ". . . mandamus is the proper avenue for one becalmed in the judge's indifference."

Therefore petitioner relies in the main on the criteria for a granting of relief by an extraordinary writ in pari materia #'s "2)" and "4)" on p. 654 of Bauman v. United States District Court, 557 F.2d 650, 650-665 (9th Cir. 1977), with the other guidelines being met within the overall context of the case sub-

judice. See Id., at 655: "Repeated errors of this magnitude in applying the Federal Rules of Civil Procedure may be corrected by mandamus." Bauman, at p. 655 Cf. McDonnell Douglas Corp. v. United States District Court, 523 F.2d 1087; also Bauman, cited supra., at p. 663 . . .'mandamus is in order where a district judge [has] displayed a persistent disregard of the Rules of Civil Procedure promulgated by this Court . . .' (Will v. United States (1967) 389 U.S. 90, 96, 88 S.Ct. 269, 274, 19 L.Ed.2d 305 (citing LaBuy v. Howes Leather Co., Inc. (1957) 352 U.S. 249, 77 S. Ct. 309, 1 L.Ed.2d 290).)".

The petitioner requests acknowledgment that in the context of the course of events he had to wait until after the state [cause of action] criminal proceedings to be able/allowed (by case-law) to file for redress - ergo within

'two years' of the end of the criminal proceedings rather than from the time petitioner originally complained against the officer, inter alia evidence of delay by opposing attorney's for defendants now before the courts-below, or disability or biaseness of the courts-below. See e.g. United States v. Tison, 780 F.2d 1569, 1569-1573 (11th Cir. 1986); also Landigran v. City of Warwick, 628 F.2d 736 (1980), etc. case-law.

The New England Law Review, [Vol. 7:215 1972], an article titled 'The Ninth Amendment', at 302-305 discusses Article #'s 5, 22, 23, 26, and 27 of the Universal Declaration of Human Rights, in seriatim, "which states, in part that: 'No one shall be subjected to . . . degrading treatment.' . . . there does not have to be any physical invasion or physical abuse . . . mental degradation or humiliation . . . would be sufficient in itself to

violate this right, and that it is a natural right of man."

Also, in the case of Bibbo v. Mulhern, 621 F. Supp. 1018, 1026-1029 it was recognized that " . . . very real sense the officer's corrupt scheme can scar the citizen as much as would ever be possible with the fist or billy club. Such conduct is especially gregarious when one in a supervisory position encourages."

Another reason is that the evidence in accord with Carey v. Piphus, et al. 55 L.Ed.2d 252 (1978) presumptions at S. Ct. # 97-1154, App. C, p. 162; in full at that prior related action 95-cv-1409, Doc. ent. # 69, App. # 16; Exhibit 102 (8 pages total), with such 'evidence' and/or 'presumptions' never having been adjudicated, nor even acknowledged.

The Petitioner hereby points to what he feels the 'evidence' corroborates as to the particular facts upon any

otherwise unfamiliar standard of review.

These are in one sense undisputed, and include [Count II ¶ 11] 'discovery rule' date of 7/20-7/22/95; deposition date of 8/29/95 for the covert activity of Rev. Robert Sayre, the dual private and state actor Millersville University campus minister, for getting involved in purported matters of morality where his conclusions were admitted to be based upon 'no school of thought' (see depo. reference in FRAP 28 (j) filing of C.A.3d Cir. # 96-1997); attempted concurrence disregarded and attempt to add parties on 11/23/95 (prior to summary judgment filing date of 12/8/95); also [Count VII at ¶ 8] for Fed.R.Civ.P. # 15's 'relation-back' date of 3/10/95. Also see [Count VII ¶ 10] for comportance with Smith v. Holtz, 87 F.3d 108 (3d Cir. 1996) date of 10/24/94 as to the date on which

the case ultimately turns so as to be in accordance with well-established law of this and other circuits (case-law infra.).

See also [Doc. Ent. # 24 (Amended Complaint) at Count # I, ¶ "9)"] specifically incorporating by reference to the '95 action', the ending dates of the prior matter against the Plaintiff.

See also [Count VIII at end of ¶ 13 on p. 23 of Doc. Ent. # 24 - Amended Complaint] as to October 24, 1994; also [Id., Count # IX, at p. 25, ¶ #'d "7)" and Id., at p. 26, ¶ #'d "9)"] referring to "second trial" and "October 24th, 1994, respectively.

See also [Doc. Ent. # 24, Count # X, at p. 31, ¶ #'d as "8)"] referring to October 24th, 1994; also [Doc. Ent. # 24 - Amended Complaint at Count # XII, on p. 37 at ¶ #'d as "9)"] referring to 'discovery rule' date of July 21st, 1995, thereby conforming to within the two-year statute

of limitations, whether by means of Fed.R.Civ.P. # 15 'relation-back' provisions or, from the period of the end of the 'state [cause of] action'. See e.g. Heck v. Humphrey, 129 L.Ed.2d 383-405 (1994).

This case was filed due to the judge in the first case being disabled and disregarding Fed.R.Civ.P. 12 (f), (h) ('motions to strike') in that action (see S. Ct. # 97-1154 App. A), and was "needlessly remitted to filing a new action".

This [present] case was filed on June 5, 1996, over three months prior to summary judgment opinion and order in the related action, with the facts or statement of the claim in direct conflict with that related-action's findings (see Doc. ent. # 99,).

The proper standard of review for Fed.R.Civ.P. # 11 sanctions is that of

de novo. See Attachment # 29 of Doc. ent. # 59, p.p. 13, 17, 28-29, 38, & 48.

The proper standard of review on motions to dismiss is that of plenary. See 3d Cir. case of Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976) used by the Court or defense-counsel specifically states:

> " . . . on review the appellate court is required to apply the same test the district court should have utilized initially . . .;

see also Id., at p. 568 (discussing "Discovery Rule" in the context of a disputed issue of fact required reversal); also Shoemaker v. City of Lock Haven, 906 F. Supp. 230 (M.D.Pa.1995); also Seneca Insurance Co. v. Commercial Transp., Inc., 906 F. Supp. 239 (M.D.Pa.1995), as well as Mines v. Kahle, 557 F. Supp. 1030, 1032 (W.D.Pa. 1983).

CONCLUSION

For the reasons stated in many parallel and converse 7th Amendment and summary judgment and motion to dismiss case-law precedents, the reasons herein, and due to the fact that there has never been a meeting (see In Re Oliver, 682 F.2d 443, 443-446 (3d Cir. 1982), the Petitioner respectfully requests that this Court not allow the 3d Cir. to continue actions tantamount to treason.

Respectfully submitted,

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APPENDIX A

PURSUANT TO S. Ct. R. P. # 14.1

(i).(i) through Id. (vi).

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

Nos. 97-1348, 97-1401, 97-1379 and 97-1571

KERRY D. FRITZ, II,

Appellant

v.

LANCASTER COUNTY; ROBERT SAYRE, DR.; ROBERT [P]LETHCHER, LT.; UNITED MINISTRIES IN HIGHER EDUCATION

On Appeal from the United States District Court

for the Eastern District of Pennsylvania

(D.C. No. 96-cv-04796

District Judge: Hon. Marjorie O. Rendell

Submitted under Third Circuit LAR 34.1 (a)

March 26, 1998

Before: BECKER, Chief Judge, ALITO, and ALDISERT, Circuit Judges

(Filed APR 16 1998)

MEMORANDUM OPINION OF THE COURT

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ALDISERT, Circuit Judge.

Kerry D. Fritz II, proceeding pro se, filed a complaint in the district court alleging that Lancaster County, United Campus MInistries ("UCM"), United Ministries in Higher Education ("UMHE"), Dr. Gary Reighard, who is President of the Department of Student Affairs at Millersville University, Dr. Robert Sayre, and Lieutenant Robert Pletcher of the Millersville University Police Department deprived him of his civil rights in violation of 42 U.S.C. § 1983, and violated state law, by causing him to be charged with harassing a student at

Millersville University.

The district court dismissed all of Fritz's federal claims and declined to exercise jurisdiction over his state law claims, and Fritz appeals. The district court dismissed the federal claims because they were barred by the statute of limitations. In § 1983 cases, we apply the state personal injury statute of limtations. Wilson v. Garcia, 471 U.S. 261, 280 (1985). The appropriate limitation period for § 1983 actions brought in Pennsylvania is the two-year limitation provided by 42 Pa. Cons. Stat. § 5524. Smith v. City of Pittsburgh, 764 F.2d 188, 194 (3d Cir. 1985). Fritz filed his complaint on July 5, 1996, more than two years after March 1994, the time of the events underlying his complaint. Therefore, the district court did not err when it dismissed the claims as barred by the statute of limitations.

In addition to the federal claims, Fritz alleged numerous state law claims including intentional infliction of emotional distress, slander, defamation, invasion of privacy, malicious prosecution, abuse of process and various Pennsylvania statutory

violations. The district court exercised its discretion to decline supplemental jurisdiction because it had dismissed all claims over which it had original jurisdiction. 28 U.S.C. § 1367 (c); see Growth Horizons, Inc. v. Delaware County, 983 F.2d 1277, 1284 n. 14 (3d Cir. 1993). We conclude that the district court did not exceed the proper bounds of discretion.

Fritz has also appealed from various orders entered by the district court during the proceedings. He appeals

the district court's orders denying his several motions for an extension or enlargement of time to file a responsive pleading. We review the district court's decisions to deny enlargements of time for abuse of discretion. See Spears v. City of Indianapolis, 74 F.3d 153, 157 (7th Cir. 1996). We conclude that the district court did not exceed the proper exercise of discretion in this respect.

Fritz appeals the denial of his various motions for Rule 11 sanctions against certain defendants and their attorneys. The district court determined that Fritz failed to establish that there is no evidentiary support for defense counsel's factual and legal arguments in these issues, as required for sanctions under Rule 11 (b) (3), Federal Rules of Civil Procedure. Moreover, the court held that Fritz presented no evidence supporting his allegations that defense

counsel filed the motions to dismiss for any improper purpose, as required for sanctions under Rule 11 (b) (1). Reduced to its essence, Fritz's argument is that because he interprets the facts and case law differently than defense counsels, defense counsels must be incorrect and therefore should be sanctioned. However, Rule 11 is not to be used routinely when the parties disagree about the correct resolution of the

matter in litigation but instead is reserved for exceptional circumstances. Morristown Daily Record, Inc. v. Graphic Communications Union, Local 8N, 832 F.2d 31, 32 (3d Cir. 1987). We have carefully considered the record and conclude that the district court's decisions on sanctions did not constitute impermissible exercises of discretion. Spain v. Galleon, 26 F.3d 439, 455 (3d Cir. 1994).

We also deny Fritz's "Motion to Correct the District Court's Clerk's Mistake which has confused attorney Burger" because it is moot in light of our disposition of this appeal.

We have considered every contention presented by the Appellant and conclude that no further discussion is necessary. This, too, must be said. Our decision to affirm the district court in all respects is the final order in all matters relating to civil action No. 96-cv-04796 in the Eastern District of Pennsylvania.

The judgments of the district court will be affirmed.

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TO THE CLERK:

Please file the foregoing opinion.

_____ signed by Aldisert _____

9 A
Circuit Judge

DATED: APR 16 1998

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

Nos. 97-1348, 97-1401, 97-1379 and 97-1571

KERRY D. FRITZ, II,

Appellant

v.

LANCASTER COUNTY; ROBERT SAYRE, DR.;
ROBERT [P]LETHCHER, LT.; UNITED MINISTRIES
IN HIGHER EDUCATION

On Appeal from the United States District
Court
for the Eastern District of Pennsylvania
(D.C. No. 96-cv-04796
District Judge: Hon. Marjorie O. Rendell

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10 A

Submitted March 26, 1998

Before: BECKER, Chief Judge, ALITO, and ALDISERT, Circuit Judges

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Judgment

This cause came on to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted on March 26, 1998.

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On consideration whereof, it is now ADJUDGED and ORDERED by this Court that the judgments of the district court entered April 15, 1997 and July 1, 1997, be and the same are hereby affirmed.

Costs taxed against Appellant.

Attest:

__ signed by P. Douglas Sisk __

DATED: APR 16 1998 Clerk

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

May 18, 1998

Nos. 97-1348, 97-1401, 97-1379 and 97-1571

Re: Fritz v. Lancaster County

Present: BECKER, Chief Judge, Alito and Aldisert, Circuit Judges.

1. Motion by Appellant Kerry D. Fritz, II, pro se, entitled, "Application for Appeal Conference Sanctioned by FRAP # 33".

2. The Opinion and Judgment Order in this appeal was filed on 4/16/98.

3. Any response to the above motion due 5/26/98, will be forwardedupon receipt.

__ signed by ____

Debra Ruh

Case Manager

Direct Dial 597-3144

P.S. The Petition for Rehearing filed by

Mr. Fritz is currently before the Court in banc.

ORDER

The foregoing motion is denied.

By the Court,

___ signed by Aldisert___

Dated: JUN 03 1998 Circuit Judge

DR/CC: KDF

FRF

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Docket Entry # 83

Fritz : Civil Action

v. :

Lancaster County, et al. : NO. 96-4796

ORDER FILED JUN 30, 1997

AND NOW, this 30th day of June, 1997, upon consideration of defendants' motions to dismiss and plaintiff's responses thereto, and finding that:

1. Kerry D. Fritz II, ("Fritz") proceeding pro se, claims that the defendants deprived him of his civil rights in violation of 42 U.S.C. § 1983. Defendants include Lancaster County, United Campus Ministries ("UCM"), United Ministries in Higher Education ("UMHE"), Gary Reighard, Ph.D. ("Reighard"), president of the Department of Student Affairs at Millersville University, Robert Sayre, Ph.D. ("Sayre"), and Robert Pletcher ("Pletcher"), Lieutenant of the Millersville University Police. Plaintiff's claims arise out of events that occurred in connection with charges filed against plaintiff for harassment of a student at Millersville University. 18 Pa. C.S.A. § 2709. The cause of action in the instant case arises from the same set of facts as an earlier case filed by plaintiff. >>>>>footnote 1 inserted here>> In that case, docketed at 95-1409,

plaintiff alleged a multitude of claims against Detective Teresa Connelly and Chief Wayne Silcox of the Millersville University Police Department and Dr. Edward Thomson, Assistant Vice-President of Student Affairs at Millersville University. On September 30, 1996, this court issues an opinion entering judgment in favor of these defendants. << end of n 1 <<<< The opinion issued in that case includes a

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comprehensive statement of the material facts which are incorporated herein by reference.

2. Each defendant has filed a motion to dismiss to which plaintiff has responded. >>> n 2 inserted here>> Although plaintiff's submitted briefs are not specifically captioned as "responses" to defendants' moticns to dismiss, the

documents - - various motions for sanctions and a motion to "sua sponte [?s?]quash defendant Millersville Council of Churches . . . " - - in actuality address the substantive arguments presented by the defendants in their motions to dismiss. <<<end of n 2 <<

The defendants fall into three categories: first, Reighard, Sayre and Pletcher, employees of Millersville University who allegedly violated plaintiff's constitutional rights by charging, investigating and prosecuting him for harassment of a student at the university; second, UCM and UMHE, alleged employers of Sayre responsible for Sayre's training, supervision, and control; and third, Lancaster County, the entity allegedly responsible for the training and supervision of the municipal employees involved in the investigation and prosecution of the plaintiff.

3. Viewing the substance of the complaint in its entirety it appears that the plaintiff is alleging numerous federal and state law claims. Because federal jurisdiction is based exclusively on the § 1983 claims, I will first address the Constitutional claims. >>> n 3 inserted here>> Section 1983 states, in pertinent part: every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured . . .

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42 U.S.C. § 1983. <<< end n 3 <<<

4. Each of the defendants has argued that plaintiff's claims are barred

by the statute of limitations. In § 1983 cases federal courts apply the state personal injury statute of limitations. Wilson v. Garcia, 471 U.S. 261, 280 (1985). The appropriate limitation period for § 1983 actions brought in Pennsylvania is the two-year limitation provided by 42 Pa. C.S.A. § 5524. Smith v. City of Pittsburgh, 764 F.2d 188, 194 (3d Cir.), cert. denied, 474 U.S. 950 (1985). Plaintiff's action would be untimely under this rule. Plaintiff filed his complaint on July 5, 1996, and an amended complaint on October 7, 1996, both more than two years after March, 1994, the time of the events leading to this cause of action. As such, plaintiff's federal claims are barred and will be dismissed.

5. Plaintiff also alleges numerous state law claims including intentional infliction of emotional distress, slander, defamation, invasion of

privacy, malicious prosecution, abuse of process, and violations of 42 Pa. C.S.A. §§ 5943 and 5944. >>> n 4 inserted here>> In arguing that defendant Sayre violated clergy-penitent privilege, plaintiff fails to state a cognizable constitutional violation. Rather, plaintiff relies on 42 Pa. C.S.A. §§ 5943, 5944. <<<end of n 4 <<< Having dismissed plaintiff's federal causes of action, this Court will not exercise supplemental jurisdiction over the pendent state law claims filed against defendants. In civil actions where the district courts have original jurisdiction, the district courts have "supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article

III of the United States Constitution." 28 U.S.C.A. § 1367 (a). At its discretion, a court can decline to assert supplemental jurisdiction if it has dismissed all claims over which it has original jurisdiction. 28 U.S.C.A. § 1367 (c); Growth Horizons, Inc. v. Delaware County, 983 F.2d 1277, 1284 n. 14 (3d Cir. 1993) (noting that "federal courts shall exercise supplemental jurisdiction over pendent claims arising out of the same case or controversy and may decline to exercise jurisdiction if all federal claims are dismissed"); Timm v. Mead Corp., 32 F.3d 273, 276 (7th Cir. 1994) (finding that in most circumstances the court's discretion will "require declining jurisdiction over pendent state claims whenever the claims conferring federal jurisdiction is dismissed before trial"). Therefore, because all federal claims have been extinguished, this Court shall not

exercise jurisdiction over the state law claims filed against defendants.

It is Hereby Ordered that defendants United Campus Ministries, United Ministries in Higher Education, Lancaster County, Reighard, Sayre and Pletcher's motions to dismiss are GRANTED as to plaintiff's federal claims. All remaining state claims are DISMISSED. Plaintiff's motion to "Sua sponte quash defendant Millersville Council of Churches Fed.R.Civ.P. 12 (b) (6) motion for failure to assert valid grounds for ruling in their favor" is DENIED as MOOT.

BY THE COURT:

___ signed by____

MARJORIE O. RENDELL, J

ENTERED: ___7-1-97____

CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

21 A

Docket Entry # 65

Fritz : Civil Action

v. :

Lancaster County, et al. : NO. 96-4796

ORDER FILED APR 14, 1997

AND NOW, this 11th day of April, 1997, it is Hereby Ordered that plaintiff's motion for extension of time due to Fed.R.Civ.P. # 11 (c)'s 21-day safe-harbor period, filed November 15, 1996, is DENIED.

BY THE COURT

_____signed by_____

MARJORIE O. RENDELL, J.

ENTERED: ____4/15/97____

CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Docket Entry # 67

Fritz : Civil Action

v. :

Lancaster County, et al. : NO. 96-479

ORDER FILED APR 14, 1997

AND NOW, this 10th day of April, 1997, upon consideration of Plaintiff's motion for "Sanctions Responsive Pleading Against Berger and Lancaster County After the Fed.R.Civ.P. # 11 (c) 21-day Requirement", and finding that

1. Plaintiff argues that defendant Lancaster County and defense counsel Lawrence Berger have engaged in improper conduct, including misinterpreting the applicable law and misleading the Court.

2. Rule 11 of the federal Rules of Civil Procedure requires a reasonable inquiry into both the facts and law supporting a particular pleading. Ford Motor Co. v. Summit Motor Products, Inc., 930 F.2d 277, 289 (3d Cir. 1991), cert.

denied sub nom. Altron Corp. v. Ford Motor Co., 502 U.S. 939 (1991). Generally, a court will impose sanctions only in exceptional circumstances where a "claim or motion is patently unmeritorious or frivolous." Id.

3. Plaintiff fails to establish that there is no evidentiary support for defense counsel's factual and legal arguments. Rather, plaintiff argues only that because he could interpret the facts and case law differently, defense counsel

must be incorrect in his own interpretation. Rule 11 is not to be used routinely when the parties disagree about the correct resolution of a matter in litigation. Morristown Daily Record Inc. v. Graphic Communications Union, 832 F.2d 31, 32 (3d Cir. 1987). Rule 11 is instead reserved for only exceptional

circumstances. Id.

4. Plaintiff's Motion and his supporting brief fail to establish any basis for imposing sanctions.

It is therefore Ordered that Plaintiff's Motion for "Sanctions Responsive Pleading Against Berger and Lancaster COunty After the Fed.R.CIv.P. # 11 (c) 21-day Requirement" is DENIED.

BY THE COURT:

___ signed by____

MARJORIE O. RENDELL, J

ENTERED: ___4-15-97____

CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Docket Entry # 68

Fritz : Civil Action

v. :

Lancaster County, et al. : NO. 96-4796

ORDER FILED APR 14, 1997

AND NOW, this 10th day of April, 1997, upon consideration of Plaintiff's motion for sanctions against United Ministries in Higher Education and attorney Havas, and finding that

1. Plaintiff argues that defense attorney John Havas has misinterpreted the applicable law and will ultimately be unsuccessful on the merits. By these allegations plaintiff appears to be requesting sanctions for the actions of the defense counsel in advocating for his client's position.

2. Rule 11 of the federal Rules of Civil Procedure requires a reasonable inquiry into both the facts and law suporting a particular pleading. Ford Motor Co. v. Summit Motor Products, Inc., 930 F.2d 277, 289 (3d Cir. 1991), cert. denied sub nom. Altron Corp. v. Ford Motor Co., 502 U.S. 939 (1991). Generally, a court will impose sanctions only in

exceptional circumstances where "a claim or motion is patently unmeritorious or frivolous." Id.

3. The court will sanction an attorney if the allegations and factual contentions in a brief do not have evidentiary support. Fed.R.Civ.P. 11 (b)(3). Plaintiff fails

to establish that there is no evidentiary support for defense counsel's factual and legal arguments. Rather, plaintiff argues only that because he could interpret the facts and case law differently, defense counsel must be incorrect in his own interpretation. Rule 11 is not to be used routinely when the parties disagree about the correct resolution of a matter in litigation. Morristown Daily Record, Inc. v. Graphic Communications Union, 832 F.2d 31, 32 (3d Cir. 1987). Rule 11 is instead

reserved for only exceptional circumstances. Id.

4. Plaintiff's Motion and his supporting brief fail to establish any basis for imposing sanctions.

It is therefore ORDERED that Plaintiff's Motion for Sanctions against United Ministries in Higher Education and attorney Havas is DENIED.

BY THE COURT:

___ signed by____

MARJORIE O. RENDELL, J

ENTERED: ___4-15-97____

CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Docket Entry # 69

Fritz : Civil Action

v. :

Lancaster County, et al. : NO. 96-4796

ORDER FILED APR 14, 1997

AND NOW, this 10th day of April, 1997, it is Hereby Ordered that plaintiff's motion for extension of time to file responsive pleading to reflect Fed.R.Civ.P. # 11 (c) 21-day requirement, filed November 15, 1996, is DENIED. Plaintiff's additional two motions for extension of time to file responsive pleadng to reflect Fed.R.Civ.P. # 11 (c) 21-day requirement, both filed November 22, 1996, pertain to the same matters addressed in plaintiff's initial motion, and as such are DENIED.

BY THE COURT:

___ signed by____

MARJORIE O. RENDELL, J

ENTERED: ___4-15-97____

CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Docket Entry # 70

Fritz : Civil Action

v. :

Lancaster County, et al. : NO. 96-4796

ORDER FILED APR 14, 1997

AND NOW, this 10th day of April, 1997, upon consideration of Plaintiff's motion for sanctions against attorney DeGarcia after 21-day requirement has been met under Fed.R.Civ.P. # 11, and finding that

1. Plaintiff argues that the Court should sanction defense counsel for arguemnts advanced in defendants' brief in support of their motion to dismiss. Plaintiff claims that defendants' arguments are unsupported and lack legal merit, and allges that defense counsel "has attempted a post-hoc sleight of hand in order to mislead the Court or for other improper purpose such as harass or delay . . ." Plaintiff's brief at 4.

2. Plaintiff has filed

numerous motions for sanctions not only in this case, but also in a related case. >>>>footnote 1 inseted here>> The related case, docketed at 95-1409, was closed on September 30, 1996. Defendants' motion for summary judgment was granted as to plaintiff's federal claims and all remaining state claims were dismissed. << end of n. 1 <<<<<< In ruling on these motions, I have set forth the parameters and standards of Rule 11 numerous times. Nonetheless, in an extreme abundance of caution, and in light of the fact that plaintiff is proceeding

pro se, I will review the pertinent provisions of Rule 11.

3. Rule 11 of the federal Rules of Civil Procedure requires a reasonable inquiry into both the facts and law supporting a particular pleading. Ford Motor Co. v. Summit Motor Products, Inc.,

930 F.2d 277, 289 (3d Cir. 1991), cert. denied sub nom. Altron Corp. v. Ford Motor Co., 502 U.S. 939 (1991). Generally, a court will impose sanctions only in exceptional circumstances where a "claim or motion is patently unmeritorious or frivolous." Id. The Court may sanction an attorney if a motion or brief in support thereof is presented for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. Fed.R.Civ.P. 11 (b) (1). The court may also sanction an attorney if the allegations and factual contentions in a brief do not have evidentiary support. Fed.R.Civ.P. 11 (b) (3).

4. Plaintiff fails to establish that there is no evidentiary support for defense counsel's factual and legal arguemnts. Rather, plaintiff argues only, that because he could interpret the

facts and case law differently, defense counsel must be incorrect in her own interpretation. Moreover, plaintiff has presented no evidence that defense counsel filed the motion to dismiss for any improper purpose. Rule 11 is not to be used routinely when the parties disagree about the correct resolution of a matter in litigation. Morristown Daily Record, Inc. v. Graphic Communications Union, 832 F.2d 31, 32 (3d Cir. 1987). Rule 11 is instead reserved for only exceptional circumstances. Id.

p. 3

5. Plaintiff's Motion and his supporting brief fail to establish any basis for imposing sanctions.

It is therefore Ordered that Plaintiff's Motion for Sanctions against attorney DeGarcia is DENIED.

BY THE COURT:

33 A

___ signed by____

MARJORIE O. RENDELL, J

ENTERED: ___4-15-97____

CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Docket Entry # 71

Fritz : Civil Action

v. :

Lancaster County, et al. : NO. 96-4796

ORDER FILED APR 14, 1997

AND NOW, this 10th day of April, 1997, upon consideration of Plaintiff's motion for sanctions against United Campus Ministries, and finding that

1. Plaintiff argues that defendant United Campus Ministries "has attempted to follow the same course of conduct in this litigation [as defense attorney DeGarcia]. Specifically, plaintiff claims that United Campus

Ministry has misinterpreted the applicable law and is misleading the Court.

2. Rule 11 of the federal Rules of Civil Procedure requires a reasonable inquiry into both the facts and law supporting a particular pleading. Ford Motor Co. v. Summit Motor Products, Inc., 930 F.2d 277, 289 (3d Cir. 1991), cert. denied sub nom. Altron Corp. v. Ford Motor Co., 502 U.S. 939 (1991). Generally, a court will impose sanctions only in exceptional circumstances where a "claim or motion is patently unmeritorious or frivolous." Id.

3. Plaintiff fails to establish that there is no evidentiary support for defense counsel's factual and legal arguments. Rather, plaintiff argues only that because he could interpret the facts and case law differently, defense counsel

must be incorrect in his own interpretation. Rule 11 is not to be used routinely when the parties disagree about the correct resolution of a matter in litigation. Morristown Daily Record Inc. v. Graphics Communications Union, 832 F.2d 31, 32 (3d Cir. 1987). Rule 11 is instead reserved for only exceptional circumstances. Id.

4. Plaintiff's Motion and his supporting brief fail to establish any basis for imposing sanctions.

It is therefore Ordered that Plaintiff's Motion for Sanctions against United Campus Ministries is DENIED.

BY THE COURT:

___ signed by____

MARJORIE O. RENDELL, J

ENTERED: ___4-15-97____

CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Docket Entry # 37

Fritz : Civil Action

v. :

Lancaster County, et al. : NO. 96-4796

ORDER FILED NOV - 8 1996

AND NOW, this 7th day of November, 1996, upon consideration of Plaintiff's Motion for "Sanctions for De-Garcia's Unmeritorious Motions and Non-responsive, Evasive, and Misleading Tactics", and finding that

1. Plaintiff argues that defense attorney Jacqueline Jackson DeGarcia is "playing fast and loose with the facts, law, and civil procedure in that she attempts to continue misleading the Court and fails to even attempt to provide factual and legal support for why

she filed a protective order to keep plaintiff from taking depositions and why she unmeritoriously and needlessly created a dispute." By these allegations plaintiff appears to be requesting sanctions for the actions of defense counsel in seeking a protective order to prevent the plaintiff from taking the depositions of Diane Hostetter and Mari Bond. On August 26, 1996 the court issued an order granting the defendants' motion for a protective order.

2. Rule 11 of the federal Rules of Civil Procedure requires a reasonable inquiry into both the facts and law supporting a particular pleading. Ford Motor Co. v. Summit Motor Products, Inc., 930 F.2d 277, 289 (3d Cir. 1991), cert. denied

sub. nom. Altron Corp. v. Ford Motor Co., 502 U.S. 939 (1991). Generally, a court

will impose sanctions only in exceptional circumstances where "a claim or motion is patently unmeritorious or frivolous." Id.

3. The court will sanction an attorney if the allegations and factual contentions in a brief do not have evidentiary support. Fed.R.Civ.P. 11 (b)(3). Plaintiff fails to establish that there was no evidentiary support for defense counsel's motion for a protective order. Rather, plaintiff argues only that because he could interpret the facts differently, defense counsel must have misinterpreted the facts. Rule 11 is not to be used routinely when the parties disagree about the correct resolution of a matter in litigation. Morristown Daily Record, Inc. v. Graphic Communications Union, 832 F.2d 31, 32 (3d Cir. 1987). Rule 11 is instead reserved for only exceptional circumstances. Id.

4. Plaintiff's Motion and his

supporting brief fail to establish any basis for imposing sanctions.

It is therefore Ordered that Plaintiff's Motion for Sanctions for DeGarcia's Unmeritorious Motions aand Non-responsive, Evasive, and Misleading Tactics is DENIED.

BY THE COURT:

__signed by__

ENTERED: 11-12-96 Marjorie O. Rendell, J

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Docket Entry # 40

Fritz : Civil Action

v. :

Lancaster County, et al. : NO. 96-4796

ORDER FILED NOV - 8 1996

AND NOW, this 8th day of November, 1996, it is hereby Ordered that Plaintiff's Motion to Accept De-Garcia's Motion to Strike as Defendants' Admissions

of Irreparable Harm to Plaintiff is DENIED.

BY THE COURT:

____signed by____

Marjorie O. Rendell, J.

ENTERED: 11-12-96

CLERK OF COURT

S. Ct. R. P. # 14.1 (i).(ii) material starting here.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED JUL 23 1998

IN RE KERRY D. FRITZ II :

MISCELLANEOUS ACTION

: NO. 98-41

ENTERED: _ 7/23/98_

CLERK OF COURT

MEMORANDUM

Raymond J. Broderick, J. July 23, 1998

The petitioner, Kerry D. Fritz II, has filed a pro se petition to perpetuate testimony pursuant to Rule 27 of the Federal Rules of Civil Procedure. Rule 27 (a) provides that "[a] person who desires to perpetuate testimony regarding any matter that may be cognizable in any

court of the United States may file a verified petition in the United States district court in the district of residence of any expected adverse party." The petition should only be granted if the court is satisfied "that the perpetuation of testimony may prevent a failure or delay of justice." Fed.R.Civ.P. 27 (a) (3).

The Court has construed the twenty-page, pro se petition liberally in accordance with Haines v. Kerner, 404 U.S. 519, 520 (1972). Even construing the petition liberally, however, the Court cannot discern that the testimony petitioner seeks to perpetuate regards "any matter that may be cognizable in [a] Court of the United States." Fed. R. Civ. P. 27 (a) (1). The petitioner seeks to depose more than twenty people who apparently

have some connection with a federal civil rights action he filed in 1995. In that action, the district court granted summary judgment against Fritz on his pro se claims that he had been deprived of his civil rights in a summary offense proceeding in Lancaster County in which he was found guilty of sexually harassing a Millersville University student. Fritz v. Bond, No. 95-1409, 1996 WL 560339 (E.D.Pa. Sept. 30, 1996). The petitioner's 1995 claims have been fully exhausted, as the district court's decision was affirmed on appeal and the United States Supreme Court has denied certiorari. Fritz v. Bond, 129 F.3d 1254 (3d Cir. 1997) [table]; cert. denied, 118 S. Ct. 1056 (1998). The instant petition appears to be an attempt to relitigate these claims. The petitioner seeks to depose the district judge who presided over his 1995 case, the Third

Circuit judges who affirmed that decision, and several other individuals who the petitioner apparently believes are somehow connected to his 1995 case, such as members of the United States Senate and House of Representatives' judiciary committees and the Pennsylvania Attorney General.

Moreover, the petitioner has failed to make any showing that perpetuation of testimony is necessary to "prevent a failure or delay of justice." Fed. R. Civ. P. 27 (a) (3). Accordingly, the petition to perpetuate must be denied.

An appropriate Order follows.

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE KERRY D. FRITZ II :

MISCELLANEOUS ACTION

: NO. 98-41

ORDER

AND NOW, this 23rd day of July, 1998; upon consideration of the petition under Fed.R.Civ.P. 27 to perpetuate testimony; for the reasons stated in the Court's Memorandum of this date;

IT IS ORDERED: The petition under Fed. R. Civ. P. 27 to perpetuate testimony, filed March 19, 1998, is DENIED.

_____signed by_____

Raymond J. Broderick, J.

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

NO. 96-1997

KERRY D. FRITZ, II,

46 A

Appellant

v.

MAURI BOND; TERESA CONNELLY, WAYNE SILCOX; EDWARD THOMSON; LEO ECKERT; CRAIG STEDMAN; CHARLES ACHEY; MICHAEL PEREZOUS

On Appeal From the United States District Court

For the Eastern District of Pennsylvania

(D.C. Civil Action No. 95-cv-01409)

District Judge: Honorable Marjorie O. Rendell

Submitted August 1, 1997

BEFORE: STAPLETON, COWEN and LEWIS, Circuit Judges

JUDGMENT ORDER

After consideration of the contentions raised by appellant, it is

ORDERED AND ADJUDGED that the

judgment of the district court entered October 1, 1996, be and is hereby affirmed.

Costs taxed against appellant.

By the Court,

(signed by)

Walter K. Stapleton

Circuit Judge

ATTEST:

(signed by)

P. Douglas Sisk

Dated: SEP 29 1997 Clerk

((see Doc. Ent. 99 and S.Ct. # 97-1154))

p. 1 of DOCKET ENTRY # 31; re: S.Ct. 97-1154

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KERRY D. FRITZ, II, : CIVIL ACTION

Plaintiff : NO. CV-95-1409

v. : File AUG 9, 1995

MAURI BOND, TERESA :

CONNELLY, WAYNE :
SILCOX, EDWARD : DOCKET ENTRY # 31
THOMSON, CHARLES :
ACHEY, CRAIG STEDMAN :
LEO ECKERT AND : ENTERED 8/9/95
MICHAEL PEREZOUS : CLERK OF COURT

Defendants

MEMORANDUM AND ORDER

HUYETT, J. August 1, 1995

Kerry D. Fritz, II ("Plaintiff") proceeding pro se, claims that the Defendants deprived him of civil rights in violation of 42 U.S.C.A. § 1983 in a state criminal proceeding brought against him in Lancaster County. The Defendants are Mauri Bond, the alleged victim in the state criminal proceeding; Teresa Connelly, Sergeant, Millersville University Police Department; Wayne Silcox, Chief, Millersville University Police Department; Edward Thomas, Vice-President of Student Affairs at

Millersville University; Honorable Leo H. Eckert, Jr., District Justice for Magisterial District 12-2-06; Craig Stedman and Charles Achey, Assistant District Attorneys for Lancaster County; and The Honorable Michael J. Perezous, Judge of the Court of Common Pleas of Lancaster County. Defendants District Justice Eckert and Judge Perezous filed separate motions to dismiss Plaintiff's claims against them. For clarity, the Court will consider these motions together. The Court will grant Defendants' motions and will

p. 2 of DOCKET ENTRY # 31; re: S.Ct. 97-1154

dismiss Plaintiff's complaint against Defendants Eckert and Perezous with prejudice.

I. BACKGROUND

Defendant Mauri Bond filed a written statement with Millersville University Police alleging that Plaintiff was harassing and stalking her. Defendant Sergeant Connelly and Defendant Chief Silcox investigated the allegations and charged Plaintiff with harassment under Pa. C.S.A. § 2709. (Footnote 1 inserted here) A hearing was held in front of Defendant District Justice Eckert where Plaintiff pled not guilty. However, the Court found Plaintiff guilty and consequently he filed a Notice of Appeal from Summary Criminal Conviction with the Court of Common Pleas of Lancaster County. Defendant Charles Achey, was assigned to the case before Defendant Judge Michael Perezous in the Court of Common Pleas. Defendant Achey could not prosecute Plaintiff because the victim, Defendant Bond, refused to testify before Judge Perezous. Consequently, a nolle prosequi

was entered by the Court.

(Footnote 1) "A person commits a summary offense when, with the intent to harass, annoy, or alarm another person:

(1) he strikes, shoves, kicks or otherwise subjects him to physical contact, or attempts or threatens to do the same; or

(2) he follows a person in or about a public place or places; or

(3) he engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose."
18 Pa. C.S.A. § 2709

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II. DISCUSSION

Plaintiff Fritz claims that Defendant District Justice Eckert acted outside the scope of his judicial capacity

and violated Plaintiff's right to due process. Plaintiff's allegations fail to state a specific factual basis for these claims. In addition, Fritz alleges that Defendant Judge Perezous violated his constitutional rights because Defendant Perezous did not permit Plaintiff to bring a tape recorder into criminal proceedings in the Court of Common Pleas of Lancaster County to which Fritz was a party.

Defendants Eckert and Perezous have absolute immunity from this § 1983 action. A judge is entitled to absolute immunity when: (1) the judge "performed the type of act normally performed only by judges, and to the expectation of the parties;" and (2) the judge has subject matter jurisdiction. Stump v. Spartman, 435 U.S. 349, 362 (1978). Here, Defendants Perezous and Eckert were acting within the scope of their official duties as judges and are thus immune from Plaintiff's

federal claims. Since a federal basis of jurisdiction is lacking, the Court will dismiss Plaintiff's state claims against Defendants Eckert and Perezous. Accordingly, the Court will dismiss Plaintiff's Complaint with prejudice as to Defendants Eckert and Perezous.

An appropriate Order follows.

(signed by)

Huyett, J.

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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KERRY D. FRITZ, II,	:	CIVIL ACTION
Plaintiff	:	NO. CV-95-1409
v.	:	
MAURI BOND, TERESA	:	
CONNELLY, WAYNE	:	
SILCOX, EDWARD	:	
THOMSON, CHARLES	:	

ACHEY, CRAIG STEDMAN :

LEO ECKERT AND :

MICHAEL PEREZOUS :

Defendants

ORDER

HUYETT, J. August 1, 1995

Upon consideration of Defendants Eckert and Perezous' motions to dismiss pursuant to Fed.R.Civ.P. 12 (b), memoranda filed, and for the reasons stated in the accompanying Memorandum, Defendants' motions to dismiss are GRANTED. Plaintiff's complaint as to Defendants Eckert and Perezous is dismissed with prejudice.

IT IS SO ORDERED.

(signed by)

Huyett, J.

p. 1 of doc. ent. # 32; re: S.Ct. 97-1154

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KERRY D. FRITZ, II,	:	CIVIL ACTION
Plaintiff	:	NO. CV-95-1409
v.	:	
MAURI BOND, TERESA	:	DOCKET ENTRY # 32
CONNELLY, WAYNE	:	
SILCOX, EDWARD	:	FILE AUG 9 1995
THOMSON, CHARLES	:	
ACHEY, CRAIG STEDMAN	:	ENTERED: 8/9/95
LEO ECKERT AND	:	
MICHAEL PEREZOUS	:	CLERK OF COURT
Defendants		

ORDER

HUYETT, J. August 2, 1995

Upon consideration of Defendants Stedman and Achey's motion to dismiss pursuant to Fed.R.Civ.P. 12 (b)(6), memoranda filed, and because:

1. Plaintiff alleges that Defendants Stedman and Achey, who are Assistant District Attorneys, violated his civil rights pursuant to 42 U.S.C. § 1983 in a state criminal proceeding brought

against Plaintiff in Lancaster County. The facts relating to Plaintiff's claims are set forth in the Court's Memorandum dated August 1, 1995.

2. Prosecutors are absolutely immune from civil liability for activities "intimately associated with the judicial phase of the criminal process" and "in initiating a prosecution and in presenting the State's case, the prosecutor is immune from a civil suit for damages under § 1983." Imbler v. Pachtman, 424 U.S. 409, 430-431 (1974).

page 2 of DOCKET ENTRY # 32

Defendants' motion to dismiss is GRANTED. Plaintiff's complaint as to Defendants Stedman and Achey is dismissed with prejudice.

IT IS SO ORDERED.

(signed by)

Huyett, J.

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KERRY D. FRITZ, II,	:	CIVIL ACTION
Plaintiff	:	NO. CV-95-1409
v.	:	
MAURI BOND, TERESA	:	Docket Entry # 33
CONNELLY, WAYNE	:	
SILCOX, EDWARD	:	FILE AUG 9 1995
THOMSON, CHARLES	:	
ACHEY, CRAIG STEDMAN	:	ENTERED: 8/9/95
LEO ECKERT AND	:	
MICHAEL PEREZOUS	:	CLERK OF COURT
Defendants		

ORDER

HUYETT, J. August 2, 1995

Plaintiff commenced this action claiming that he was deprived of his civil rights in violation of 42 U.S.C. § 1983 by the alleged victim, state prosecutors, and state judges in a criminal action brought against Plaintiff in Lancaster County,

Pennsylvania. The facts related to Plaintiff's claims are set forth in the Court's Memorandum dated August 1, 1995. Defendant Mauri Bond was the alleged victim in the state action and is proceeding pro se.

Upon consideration of these facts and because:

1. "Private individuals acting pursuant to a state law are not acting 'under color of' that law so as to result in the imposition of liability" under § 1983. Brooks v. Peters, 322 F. Supp. 1273, 1277 (E.D. Wis. 1971. Specifically, "action like [filing a complaint] does not result in the deprivation of civil rights so as to impose liability under [42 U.S.C. § 1983]." Id.

2. Defendant Bond was acting in a private capacity in providing a written statement to the Millersville

University Police Department which led to Plaintiff's state criminal charge.

page 2 of Docket Entry # 33

3. Plaintiff does not allege that Defendant Bond conspired with state officials to violate Defendant's constitutional rights.

Accordingly, the Court will dismiss, sua sponte, Plaintiff's complaint as to defendant Bond with prejudice.

IT IS SO ORDERED.

(signed by)

Huyett, J.

p. 1 0f doc. ent. # 63; re: S.Ct. 97-1154

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KERRY D. FRITZ, II, : CIVIL ACTION

Plaintiff : Docket Entry # 63

v. : No. 95-1409

:

60 A

TERESA CONNELLY, et al.,: FILE NOV 14 1995

Defendants

ORDER

HUYETT, J. NOVEMBER 9, 1995

Plaintiff Kerry D. Fritz, II, has filed a motion entitled "Plaintiff's Request for Extension of Time to Seek Opposing Parties' Concurrence on Future Motion to Reinstate Defendants and/or Amend Complaint Due to Misconstruction by Counsel and Court of Matters of Law and Fact." Despite this title, the motion appears instead to seek reconsideration of the Court's Orders dismissing Plaintiff's Complaint with prejudice as to former Defendants Eckert, Perezous, Stedman, Achey and Bond. The Plaintiff also demands that the Court to recuse itself. As Plaintiff's rambling and disjointed motion provides no grounds for reconsideration,

recusal, or extension of time, it is DENIED in its entirety.

IT IS SO ORDERED.

(signature of)

HUYETT, J.

ENTERED: 11/15/95

CLERK OF COURT

page 1 0f DOCKET ENTRY # 86

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KERRY D. FRITZ, II, : CIVIL ACTION

Plaintiff : Docket Entry # 86

v. : No. 95-1409

:

TERESA CONNELLY, et al.,

ENTERED: 7/1/96

Defendants :

ORDER

Plaintiff Kerry D. Fritz, II, has filed a "Motion to Add Parties Pursuant to

Federal Rules of Civil Procedure," which the Court will treat as a Motion to Amend the Complaint. Although leave to amend "shall be freely given when Justice so requires. Fed. R. Civ. P. 15(a), it may be denied where there has been undue delay, where allowing the amendment would unduly prejudice the opposing party, or where the proposed amendment is futile. Foman v. Davis, 371 U.S. 178, 182 (1962).

The claims against the defendants that Plaintiff wishes to add are frivolous, and thus the proposed amendment is futile.

With the exceptions of Lancaster County, Dr. Robert Sayre, Dr. Gary Reighard and Lt. Pletcher, none of the prospective defendants are state actors; therefore, Plaintiff cannot state a cause of action under 42 U.S.C. § 1983 against them for violating his constitutional rights. Doe v. William

Shapiro. Esquire P.C., 852 F. Supp. 1246, 1252-53 (E.D. Pa. 1994). As to Plaintiff's invasion of privacy, false light and intentional infliction of emotional distress claims. the Court would not have subject matter

jurisdiction over these state law claims because the parties are not diverse and the claims do not arise from the same nucleus of operative fact as Plaintiff's federal claims. 28 U.S.C. § 1367; Perkins v. City of Phila., 766 F. Supp. 313, 317 (E.D. Pa. 1991). Finally, the facts alleged in the Motion fail to state a cause of action against Lancaster County, Dr. Sayre, Dr. Reighard or Lt. Pletcher because they do not establish that any of these prospective defendants deprived Plaintiff of any constitutional right.

Along with the futility of the amendment, Plaintiff's undue delay in seeking leave to amend weighs against allowing the proposed amendment. Although Plaintiff has long known of the operative facts in his new claims, he did not file the Motion until after the close of discovery and after Defendants' had filed their Motion for Summary Judgment.

Allowing Plaintiff to expand the litigation to include new parties and new allegations at this late date would unduly prejudice Defendants. Accordingly, Plaintiff's Motion is DENIED.

IT IS SO ORDERED.

(signature of)

HUYETT, J.

Doc. Ent. # 99 - Order

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Docket Entry # 99

65 A

Fritz, et al	:	Civil Action
v.	:	NO. 95-1409
Bond, et al	:	

ORDER

AND NOW, this 30th day of September, 1996, upon consideration of the Motion by Defendants Silcox, Connelly and Thomson for Summary Judgment and Plaintiff's Motion for Summary Judgment it is hereby Ordered that Plaintiff's Motion for Summary Judgment is DENIED, and Defendants' Motion for Summary Judgment is Granted as to Plaintiff's federal claims. All remaining state claims are DISMISSED.

BY THE COURT:

(signed by)

Marjorie O. Rendell

page 1 of Doc. Ent. # 99 - Memorandum

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Date of filing obscured

66 A

KERRY D. FRITZ II : CIVIL ACTION

v. :10/1/96

MAURI BOND, et al : NO. 95-1409

CLERK OF COURT

Rendell, J. September 30, 1996

MEMORANDUM

This is a civil rights action brought pursuant to 42 U.S.C. § 1983. Kerry D. Fritz, II ("Fritz") proceeding pro se, claims that the defendants deprived him of his civil rights in violation of state law prohibiting harassment. 18 Pa. C.S.A. § 2709. Defendants include Teresa Connelly, Sergeant, Millersville University Police Department; Wayne Silcox, Chief, Millersville University Police Department; and, Edward Thomson, Vice President of Student Affairs at Millersville University. (Footnote 1 inserted here) Plaintiff alleges that defendants violated his constitutional rights by charging,

investigating and prosecuting him for harassment of Mauri Bond ("Bond"). Defendants do not deny that they investigated and prosecuted Fritz. Defendants do dispute that his constitutional rights were violated.

(Footnote 1) By Orders entered August 9, 1995, the Court dismissed defendants Perezous, Eckert, Stedman, Achey and Bond.

p. # 2

Currently before the Court are cross motions for summary judgment.

I. Factual Background

On March 13, 1994, Sergeant Teresa Connelly, detective sergeant of the Millersville University Police Department, received a phone call from Bond who stated that a white male in his 30s or 40s with long hair, described as the "hippie type", had been staring at her and making her

feel uncomfortable and that she had been confronted by him.

Bond explained that on March 10, 1996, Fritz had approached Bond in the lobby of the Ganser Library of Millersville University and had made the following remarks: "Excuse me, do you have a boyfriend? I think you're beautiful. The top you're wearing really sets off your tits." (Footnote 2 inserted here) Bond went to her car and left the campus. Again, on March 13, 1994, while at the computer lab, Fritz approached Bond and apologized for his comments from the previous week. Fritz stated, I'm sorry for last week, but I couldn't help it. Your tits really showed with the top you were wearing." Bond left immediately and while walking home to her apartment, Fritz jogged up beside her and again said he was sorry but he couldn't help it. (Footnote 3 inserted here) Bond told Fritz that she

didn't want to

Footnote 2 Fritz does not dispute that he made these comments to Bond. Rather, he argues that he was not "trying" to say them and that they were a "freudian" slip and that he thought that Bond understood that he meant no harm. Fritz in both his testimony and deposition characterizes his comments as "compliments."

Footnote 3 Fritz does not dispute that he jogged up to Bond as she walked home to her apartment. Fritz does dispute what is meant by "following", arguing that he "wasn't following her like, a step by step harassing kind of way.' He states that he "just followed her

talk to him and she walked away.

Sergeant Teresa Connelly advised Bond to call the University Police if

attempted to contact her in any way in the future or if she saw him in the lab so that his name could be determined. Sergeant Connelly then telephoned the computer lab in Ganser library and spoke with a computer consultant in the library. Sergeant Connelly described the suspect as the suspect had been described to her. Upon learning that the suspect was then present in the lab, Sergeant Connelly telephone Bond. Bond then, accompanied by Sergeant Connelly and a roommate, returned to Ganser Library and identified Fritz.

Sergeant Connelly approached Fritz in the lobby of the Ganser Library, and informed him that she wanted to speak with him. Sergeant Connelly asked to see Fritz's identification, then checked for outstanding warrants, and informed him that the yōung woman in the front of the police cruiser had said that Fritz had made unwanted comments to her. Fritz

responded that he had given her a compliment a few days beforehand and that he was on a leave of absence from Millersville University. Sergeant Connelly advised Fritz not to talk to Bond again and then left.

On the morning of March 14, 1996, Wayne Silcox ("Silcox"), Chief of the Millersville University Police Department, read the incident report written by Sergeant Connelly involving Fritz and Bond. He then met with Dr. Edward Thomson ("Thomson"), assistant Vice-President in charge of Student Affairs, at a regularly scheduled Monday morning meeting. They discussed

(End of footnote 3) and caught up with her kind of following."

page # 4

the incident and the details and concerns

of Bond.

In the early afternoon, Silcox spoke with the Lancaster Mediation Center regarding Fritz. An individual at the Lancaster Mediation Center wanted the name of the woman who had alleged that Fritz harassed her. Silcox refused to give the name of the alleged victim. Several minutes later, Silcox spoke by telephone with Fritz. Silcox told Fritz that he would not supply the name of the woman. Silcox further indicated to Fritz that he would not permit Fritz to meet with Bond at the Lancaster Mediation Center and that if Bond did not want to pursue charges, the matter would be considered closed. Fritz stated that the police had blown everything out of proportion and that he had merely given the woman a compliment.

On March 14th, 1994 Bond filed a written statement with Millersville University Police alleging that Fritz was

harassing and stalking her, setting forth the incidents of the previous three days. She was instructed that if she placed any false statements on that form she could be prosecuted. At approximately 4:00 p.m. that afternoon, Silcox met with Sergeant Connelly, Bond, and Bond's father. At that time, Silcox read Bond's written statement. Based upon Sergeant Connelly's report and Bond's written statement, Silcox determined that Fritz's actions constituted harassment.

On March 14, 1994, Silcox contacted Fritz by telephone in an attempt to set up a meeting between Fritz, Silcox and Connelly. Fritz refused, stating that he was only "guilty of healthy manly

thoughts." (Footnote 4 inserted here) Silcox informed Fritz that it would be very helpful if he agreed to an interview

to ensure that all parties were treated fairly. Fritz indicated that he would call on March 16 regarding the matter.

After conferring with other administrators, Silcox determined that he would issue a "no trespass" notice to Fritz, which prohibited him from being on campus until administrators were satisfied that the pending matter was closed. In considering whether to impose a no trespass order, cases are reviewed for danger to the campus community, protection of the victim, impact on the academic process, and other factors. There is no formal policy regarding these types of restrictions.

On March 15, 1994, Silcox spoke with Reverend Robert Sayre, who is in charge of campus ministries. Sayre stated that he had spoken with Fritz about the incident. According to Sayre, Fritz stated to him that the "lady had no bra on and

her nipples were hard, thus, the lady was inviting him to make a pass or pursue her," and that "we were standing together and we just got sexually excited or what I perceived or could have been."

Since there were no other witnesses to the incidents, Silcox concluded that his investigation was complete.

On March 18, 1994, Connelly, Silcox, Bond, and Bond's father met at the district attorney's office with assistant district attorney Stedman. Stedman reaffirmed Connelly and Silcox's belief that according to the facts and the investigation,

(Footnote 4) Plaintiff admitted to commenting to Bond that he noticed that she wasn't wearing a bra and said, "if you wouldn't have had a boyfriend, I would have offered to hold them."

a charge of harassment for both incidents where Fritz had approached Bond was appropriate. Sergeant Connelly issued two harassment citations for summary offenses under 18 Pa. C.S.A. § 2709 (footnote 5 inserted here) and a Notice of Trial-Summary Case was sent to Fritz at his mailing address, informing Fritz that a trial was scheduled for April 15, 1994. On April 15, Fritz appeared before District Justice Eckert. Sergeant Connelly, Bond, and Fritz testified at the hearing. Fritz cross-examined Sergeant Connelly and Bond. The Court found plaintiff guilty and imposed a fine of $100 and ninety days probation. He filed a Notice of Appeal from Summary Criminal Conviction with the Court of Common Pleas of Lancaster County. On appeal, the prosecution was dropped because Bond refused to testify. Consequently, a nolle prosequi was entered

by the Court.

II. Legal Standard

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56 (c). An

(Footnote 5) § 2709 HARASSMENT "A person commits a summary offense when, with the intent to harass, annoy, or alarm another person: (1) he strikes, shoves, kicks or otherwise subjects him to physical contact, or attempts or threatens to do the same; or (2) he follows a person in or about a public place or places; or (3) he engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and

which serve no legitimate purpose."
18 Pa.C.S.A. § 2709

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issue is "genuine" only if there is sufficient evidentiary basis on which a reasonable jury could find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). A factual dispute is "material" only if it might affect the outcome of the suit under governing law, Id. at 248, and all inferences must be drawn, and all doubts resolved, in favor of the non-moving party. United States v. Diebold, Inc., 369 U.S. 654, 655 (1962); Gans v. Mundy, 762 F.2d 338, 341 (3d Cir.), cert. denied, 474 U.S. 1010 (1985).

On a motion for summary judgment, the moving party bears the initial burden of identifying for the Court those portions of the record that it

believes demonstrates the absence of dispute as to any material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). To defeat summary judgment, the non-moving party "may not rest upon the mere allegations or denials of [its] pleading, but [its] response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56 (e). The non-moving party must demonstrate the existence of evidence that would support a jury finding in its favor. See Anderson, 477 U.S. at 248-249.

Mere negligent conduct on the part of a defendant can never constitute an actionable cause of action under Section 1983. Rogers v. University of Pennsylvania, No. CIV.A. 86-28240, 1987 WL 17959, at *2 (E.D.Pa. Oct. 1, 1987), aff'd, 887 F.2d 262 (1989). A plaintiff

must point to admissible evidence that demonstrates the existence of a genuine issues as to more than negligent behavior on the part of each defendant, if he is to defeat the motion for summary judgment. Id.

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In the instant case, while there are many key facts, the material facts are not in dispute. Rather the parties dispute the conclusions to be drawn from the facts. As such, this case is ripe for summary judgment.

III. Discussion

The plaintiff in this case is proceeding pro se and accordingly his complaint is subject to a "less stringent standard than formal pleadings drafted by lawyers," and should be liberally construed in the plaintiff's favor. Hughes v. Rowe, 449 U.S. 5, 9 (1980). A pleading

will be judged by its substance rather than according to its form or label, and, if possible, will be construed to give effect to all its averments. 5 Wright & Miller, Federal Practice and Procedure § 1286, at 381-84 (1969). A determined effort should be made to understand what the pleader is attempting to set forth and to construe the pleading in his favor, whenever justice so requires. This is particularly true when a court is dealing with a complaint drawn by a layman unskilled in the law. Id.

Plaintiff has filed a separate complaint against each defendant. Viewing the substance of the complaints in their entirety it appears that the plaintiff is alleging numerous federal and state law claims. Because federal jurisdiction is based exclusively on the Section 1983 claims, I will first address the Constitutional claims.

Plaintiff's complaint against each defendant sets forth counts alleging constitutional violations. Each count begins with

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"Pa. Title 18, section 5301- Official Oppression, a violation to which remedy is also available under the 7th amendment and amendment 14, section 5, being 42 U.S.C.A sections 1983 and 1988 as well as 28 U.S.C.A. section 1343, in that by defendant's conduct in her acting or purporting to act in an official capacity and/or under color of law,"

The federal claims against the defendants (Footnote 6 inserted here) are

1. defendant subjected plaintiff during the accusatory interview to a denial or impedence of the plaintiff's right secured by he 4th and 14th amendments to the U.S. Constitution to be

free from seizure without probable cause,
(Sergeant Connelly)

2. defendant subjected the plaintiff during the investigation of plaintiff's alleged wrongdoing, the defendant denied or impeded the plaintiff's right to equal protection from the laws as secured by the 4th and 14th amendments to the U.S. Constitution by subjecting the plaintiff to arrest without probable cause.
(Sergeant Connelly, Silcox)

3. defendant denied or impeded the plaintiff's right under the 14th and 5th amendments to the Constitution of the laws and due process, respectively, discrimination based on sex and inherent personality traits of mental disability by refusing to investigate allegations of false statements made by the former prosecutrix.
(Sergeant Connelly, Thomson, Silcox)

4. defendant denied or impeded the plaintiff's 5th amendment of the U.S. constitution's right against compelled self-incrimination by saying during the former criminal proceeding against the plaintiff that the plaintiff would not answer any questions when questioned by the defendant in the accusatory interview."
(Sergeant Connelly)

5. defendant denied or impeded the plaintiff's right

(Footnote 6) Names indicated in parenthesis are those defendants against whom the claims are made. Underlined portions of the allegations emphasize what I believe to be the "substance" of the pleading.

pge 10
under the U.S. Constitutional Amendments,

5th and 14th clauses accused right to silence and thus prejudiced the trier of fact in saying that I really would not answer any of the questions she asked me when she stopped me in the accusatory stop.

(Sergeant Connelly)

6. defendant denied or impeded the plaintiff's right under the 14th and 6th amendments compulsory process clauses to witnesses in the plaintiff's (former defendant in hearing on 4/15/96) favor by not allowing the plaintiff to formulate cross-examination questions so as to either and/or both: impeach the witness and/or any other defense strategy which the plaintiff (former defendant) felt material to defense and wanted to use to exculpate himself during the hearing on the former two charges due to the defendant not sending and/or allowing discovery and/or inspections of the former

prosecutrix's statement and/or discovery and inspection of any statements the investigating Sgt. had written down that I said to her during the accusatory stop. (Silcox)

In support of his motion for summary judgment, plaintiff has submitted along with his brief 361 pages of case citations and excerpts from those cases. Plaintiff does not explain how the cases are relevant to his situation, nor are most of the cases identifiable since the plaintiff's citations are largely incomplete. Nonetheless, this court has made a determined effort to construe plaintiff's complaints as to give effect to all their averments.

As to Teresa Connelly, Sergeant of the Millersville University Police Department, plaintiff appears to allege arrest without probable cause in violation of the Fourth Amendment, sex

discrimination in violation of the Fifth and Fourteenth Amendments and violation of his privilege against self-incrimination under the Fifth Amendment. Plaintiff uses similar language in his complaints as to Wayne Silcox and Edward Thomson. As to Wayne Silcox, Chief

of the Millersville University Police Department, plaintiff appears to allege violation of his Sixth Amendment right to be confronted with witnesses against him, sex discrimination based on his mental disability in violation of the Fifth and Fourteenth Amendments and arrest without probable cause in violation of the Fourth Amendment. As to Edward Thomson, Vice-President of Student Affairs at Millersville University, plaintiff appears to allege sex discrimination in violation of the Fifth and Fourteenth Amendments and

discrimination based on his mental ability in violation of the Fifth and Fourteenth Amendments.

A. Federal Claims

In order to state a claim under 42 U.S.C. § 1983, plaintiff must allege (1) the violation of a right guaranteed by the Constitution or laws of the United States and (2) the deprivation of that right by a person acting under color of state law. Parrat v. Taylor, 451 U.S. 527, 535 (1981). Viewing the complaints in their entirety, plaintiff alleges violations of the Fourth, Sixth and Fourteenth Amendments to the United States Constitution. The defendants, who are Millersville University officials, have not argued that they are not state actors.

While plaintiff specifically pleads all claims as official capacity claims, I will deal with his claims as though they were against all defendants in

their individual capacities, because it appears that the Eleventh Amendment would clearly bar

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his claims if limited to liability in their official capacities. (Footnote 7 inserted here) The distinction between individual liability claims is critical. While a claim for personal monetary relief against a state official in an official capacity is tantamount to a claim against the state and is, therefore, immunized by the Eleventh Amendment. See 1 John E. Kirklin & Martin A. Schwartz, Section 1983 Litigation: Claims, Defenses and Fees § 6.5 (2d ed. 1991); Kentucky v. Graham, 473 U.S. 159, 166 (1985). Further, I find support for treating his claims as if they were seeking to impose individual liability in the fact that I should construe plaintiff's pro se complaint

liberally, and because he is asking for relief not available in official capacity suits against a state government (money damages, punitive damages). Also defendants do assert common-law immunity- applicable only to individual capacity suits- as a defense, so they, too, were aware of the possibility of my liberally construing the plaintiff's claims.

Defendants base their motion to dismiss on the absence of any constitutional violation and on their entitlement to qualified immunity. Qualified immunity shields government officials

(Footnote 7) Plaintiff brings all of his federal claims under 18 Pa. § 5301. Titled Official Oppression, the statute reads,

A person acting or purporting to act in an official capacity or taking advantage of such actual or purported

capacity commits a misdemeanor of the second degree if, knowing that his conduct is illegal, he:

(1) subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement or personal or property rights; or

(2) denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity.

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performing discretionary functions from liability insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Anderson v. Creighton, 483 U.S. 635, 639 (1987). The standard turns on the objective legal reasonableness of the official's conduct and protects all but

the plainly incompetent or those who knowingly violate clearly established federal law. Malley v. Briggs, 475 U.S. 335, 341 (1986).

a. Fourth Amendment Claims

subjected plaintiff during the accusatory interview to a denial or impedence of the plaintiff's right secured by the 4th and 14th Amendments to the U.S. Constitution to be free from seizure without probable cause.
(Sergeant Connelly)

subjected plaintiff during the investigation of plaintiff's alleged wrongdoing, the defendant denied or impeded the plaintiff's right to equal protection from the laws as secured by the 4th and 14th Amendments to the U.S. Constitution by subjecting the plaintiff to arrest without probable cause.
(Sergeant Connelly, Silcox)

Plaintiff claims that his

Fourth Amendment rights were violated in that he was stopped, and thereafter arrested for harassment, without probable cause. Defendants argue that they acted reasonably in that there was probable cause for the issuance of harassment citations to plaintiff, and further, that they are entitled to qualified immunity. I agree with defendants that the steps of the investigation taken by Sergeant Connelly substantiates a finding of probable cause, and further, that they are entitled to qualified immunity.

Plaintiff argues that Bond knowingly lied to Sergeant

Connelly and that Connelly, Silcox and Thomson failed to investigate this known falsehood. Probable cause exists if the facts and circumstances known to the officer warrant a prudent person in the

officer's shoes in believing that an offense has been committed. U.S. v. Massac, 867 F.2d 174, 175 (3d Cir. 1989). While probable cause requires more than mere suspicion, it does not require that the evidence at the time of arrest be sufficient to prove guilt beyond a reasonable doubt. Warlick v. Cross, 969 F.2d 303, 306 (7th Cir. 1992). When examining whether a police officer is acting reasonably in determining that a person should be charged with a crime, it becomes relevant whether the police officer has received information from someone who it seems reasonable to believe is telling the truth. Gramenos v. Jewel Co., Inc., 797 F.2d 432, 439 (7th Cir. 1986). Probable cause does not depend on whether the witness is right, but rather on what the police knew at the time. Id. at 439.

Sergeant Teresa Connelly issued

the two citations after ar investigation which included speaking with a lab consultant, identifying the plaintiff, speaking with Bond, reading the written statement prepared by Bond and discussing the matter with her immediate supervisor Silcox and the assistant district attorney. In addition, Sergeant Connelly spoke with the plaintiff on March 13, 1994, at which time he conceded that he had approached Bond and had paid her what he termed a "compliment". The plaintiff does not offer any affirmative evidence to dispute the information upon which the officers relied. Furthermore, the plaintiff refused to make a statement to the University Police. By plaintiff's own admission in his deposition, there were no other witnesses to the

event.

At no time did Sergeant Connelly have reason to believe that Bond was lying. Plaintiff has repeatedly stated that Bond is lying, but does not dispute that he said the things he is alleged to have stated. He admits he made the comments to Bond, but contends that Bond took his comments the "wrong" way. While there may have been an ultimate issue at the hearing as to Fritz's intent, surely the officials had reason to believe- given the nature of the remarks themselves and the repeated instances- Bond's story rather than Fritz's. Moreover, even if lacking in probable cause, the defendants are entitled to qualified immunity, in that they did not violate clearly established statutory or constitutional rights of which a reasonable person would have known. There are no genuine issues to prevent me from granting a motion for summary judgment. Mitchell v. Forsyth, 72

U.S. 511, 526 (1985). Accordingly, defendants' motion for summary judgment on the issue of arrest or seizure without probable cause is granted.

b. Fifth Amendment Claims

the defendant denied or impeded the plaintiff's 5th amendment of the U.S. Constitution's right against compelled self-incrimination by saying during the former criminal proceeding against the plaintiff that the plaintiff would not answer any questions when questioned by the defendant in the accusatory interview."

(Sergeant Connelly)

the defendant denied or impeded the plaintiff's right under the U.S. Constitutional Amendments 5th and 4th's clauses accused's right to silence and thus prejudiced the trier of fact in saying that I really would not answer any of the questions she asked me when she

stopped me in the accusatory stop.
(Sergeant Connelly)

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Plaintiff may be contending that Sergeant Connelly should have given him Miranda warning prior to questioning him in the lobby of the Ganser building. Defendants argue that plaintiff was never in custody and so defendants were not requires to give plaintiff Miranda warnings. See Miranda v. Arizona, 384 U.S. 436, 467 (1966). Plaintiff may also be claiming that at his hearing on the summary offense the reference to his failure to speak may have caused the Judge to draw a negative inference of guilt.

With respect to Miranda, the essential inquiry in determining whether a seizure has occurred is, if "in view of all of the circumstances surrounding the incident, a reasonable person would have

believed that he was not free to leave." United States v. Mendenhall, 466 U.S. 544, 554 (1979). Plaintiff was in a public area when Sergeant Connelly approached him and he voluntarily responded to her questions. Moreover, plaintiff does not contend that he was not free to leave the lobby at any time. Furthermore, Miranda warnings are a procedural safeguard rather than a right guaranteed by the Fifth Amendment. Defendants correctly argue that, even if plaintiff's allegations are true and Sergeant Connelly should have read plaintiff his Miranda rights, that violation is the basis only for suppression of a statement, and is not an independent ground for relief under § 1983. Miranda at 467.

Finally, a review of the transcript of the hearing, transcribed and submitted by the plaintiff himself, gives no indication that the context of any

reference to Fritz's not speaking or responding to questions would have resulted in the Judge drawing negative inferences from Fritz's silence. Rather, any reference to Fritz's silence was made only in the context of

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the extent of Sergeant Connelly's investigation. This is not violative of the privilege against self-incrimination. See United States v. Robinson, 485 U.S. 25, 32 (1988). Accordingly, defendants' motion for summary judgment on the issue of Fifth Amendment violations is granted.

c. Sixth Amendment Claims

The defendant denied or impeded the plaintiff's right under the 14th and 6th amendments compulsory process clauses to witnesses in the plaintiff's (former defendant in hearing on 4/15/94) favor by not allowing the plaintiff to formulate

cross-examination questions so as to either and/or both: impeach the witness and/or any other defense strategy which the plaintiff (former defendant) felt material to defense and wanted to use to exculpate himself during the hearing on the former two charges due to the defendant not sending and/or allowing discovery and/or inspection of the former prosecutrix's written statement and/or discovery and inspection of any statements the investigating Sgt. had written down that I had said to her during the accusatory stop.

(Silcox)

Plaintiff alleges that Silcox violated his rights under the Sixth Amendment by not turning over to him Bond's written statement and the police report of the incident. Plaintiff has cited no case or Rule of the Pennsylvania Rules of Criminal Procedure that requires

such an exchange in cases involving a summary offense. Nor do I find that the Sixth Amendment requires such an exchange, especially where there is a right to an appeal de novo. 42 Pa. C.S.A. Rule 83. As reflected in the transcript of the hearing, plaintiff cross-examined both Sergeant Connelly and Bond. Furthermore, since plaintiff could appeal, as he did, he was not prejudiced. Accordingly, defendants' motion for summary judgment on the issue of plaintiff's right to confront witnesses

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against him is denied.

d. Fourteenth Amendment Claims

the defendant denied or impeded the plaintiff's right under the 14th and 5th amendments to the Constitution to equal protection of the laws and due process, respectively, discrimination based on sex

and inherent personality traits of mental disability by refusing to investigate allegations of false statements made by former prosecutrix.

(Sergeant Connelly, Thomson, Silcox)

Plaintiff alleges that he was discriminated against based upon his gender and his mental disability. Plaintiff has not demonstrated any facts as to any such discrimination. No discriminating conduct as such is averred that is linked to his gender or disability. The record produced by defendants shows a valid reason for their acts. Fritz must show that the defendants' reasons were pretextual in order to succeed in a discrimination claim. He has not done so. See Fuentes v. Perskie, 32 F.3d 759, 762 (3d Cir. 1994).

Accordingly, plaintiff's claim on the issue of sex discrimination and discrimination based upon mental

disability is dismissed.

To summarize, this Court will enter summary judgment as to the Section 1983 causes of action in favor of defendants, Teresa Connelly, Wayne Silcox and Edward Thomson.

B. State Claims

Plaintiff alleges state law claims of Malicious prosecution, Intentional Infliction of Emotional Distress, Slander, Invasion of Privacy and Perjury. Having dismissed plaintiff's

federal causes of action, this Court will not exercise pendent jurisdiction over the state claims filed against defendants. Federal courts have the power to exercise pendent jurisdiction whenever the federal and state claims derive from a common nucleus of operative facts such that the plaintiff would ordinarily be expected to

try them all in one judicial proceeding, and where the federal claim has sufficient substance to confer such jurisdiction. United Mine Workers v. Gibbs, 383 U.S. 715, 725 (196). Federal courts should not exercise pendent jurisdiction if the federal claims are dismissed before trial or if it appears that the state issues substantially predominate. Gibbs at 726-727. Therefore, this Court shall not exercise jurisdiction over the state law claims filed against those defendants against whom all federal claims have been extinguished.

An appropriate order follows.

BY THE COURT:

(signed by)

Marjorie O. Rendell

S. Ct. R. P. # 14.1 (i).(iii) starting here.

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

Nos. 97-1348, 97-1401, 97-1379 and 97-1571

KERRY D. FRITZ, II,

Appellant

v.

LANCASTER COUNTY; ROBERT SAYRE, DR.; ROBERT [P]LETHCHER, LT.; UNITED MINISTRIES IN HIGHER EDUCATION

(D.C. No. 96-cv-0496)

Present: BECKER, Chief Judge, SLOVITER, STAPLETON, GREENBERG, SCIRICA, COWEN, NYGAARD, ALITO, ROTH, McKEE, and ALDISERT,* Circuit Judges

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SUR PETITION FOR PANEL REHEARING WITH SUGGESTION FOR REHEARING IN BANC

The petition for rehearing

filed by appellant having been submitted to the judges who participated in the decision of this Court, and to all the other available circuit judges in active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is DENIED.

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* As to panel rehearing only.

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BY THE COURT:

_____signed by Becker, J._____

Chief Circuit Judge

DATED: JUN 29 1998

DR/CC: KDF

FRF

S. Ct. R. P. # 14.1 (v) material starting here.

Constitutional Provisions, Treatises, Statutes, Ordinances, and Regulations

Constitutional Article # III., Sec. 1:

The judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, . . .

Constitutional Article # III., Sec. 2:

[1.] The judicial Power shall extend to all Cases, in Law, and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - . . . to controversies between . . . Citizens of the same State . . . and between a State, or the Citizens thereof,.

[2.] . . . In all other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Constitutional Article # IV., Sec. 2:

[1.] The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

[3.] No person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Constitutional Article # VI., Clause 2:

This Constitution, and the Laws of the United States which shall be made in

Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Constitutional Article # VI., Clause 3:

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and Judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Constitutional Amendment # 1: Congress shall make no law respecting an

establishment of religion, . . .

Constitutional Amendment # 1: Congress shall make no law . . . or prohibiting the free exercise thereof; . . .

Constitutional Amendment # 1: Congress shall make no law . . . abridging the freedom of speech . . .

Constitutional Amendment # 1: Congress shall make no law . . . abridging . . . to petition the Government for a redress of grievances.

Constitutional Amendment # 4: The right of the people to be secure in their persons, . . . , against unreasonable searches and seizures, shall not be violated.

Constitutional Amendment # 4: The right of the people to be secure in their . . . effects, against unreasonable searches and seizures, shall not be violated, . . .

Constitutional Amendment # 4: The right of the people to be secure in their persons, . . . , and effects, against unreasonable searches and seizures, shall not be violated, . . . but upon probable cause . .

Constitutional Amendment # 4: . . . and particularly describing the place to be searched, and the persons or things to be seized.

Constitutional Amendment # 5: No person shall be held to answer . . . or otherwise infamous crime . . . without due process of law . . ., without just compensation.

Constitutional Amendment # 5: No person shall be held to answer . . . or otherwise infamous crime . . ., . . . nor shall be compelled in any criminal case to be a witness against himself, . . ., without just compensation.

Constitutional Amendment # 5: No person shall be held to answer . . . or otherwise infamous crime . . ., nor be deprived of life, liberty, or property, without due process of law . . ., without just compensation.

Constitutional Amendment # 6: In all criminal trials, the accused shall enjoy the right . . .; . . . by an impartial . .

Constitutional Amendment # 6: In all criminal trials, the accused shall enjoy the right . . . to be informed of the nature and the cause of the accusation . .

Constitutional Amendment # 6: In all criminal trials, the accused shall enjoy the right . . .; to be confronted with the witnesses against him; . . .

Constitutional Amendment # 6: In all criminal trials, the accused shall enjoy

the right . . .; to have compulsory process for obtaining witnesses in his favor, . . .

Constitutional Amendment # 7: Trial by jury in civil cases. In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Constitutional Amendment # 8: . . . nor cruel and unusual punishments inflicted.

Constitutional Amendment # 9: The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Constitutional Amendment # 14, Section 1:

All persons born . . . in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitutional Amendment # 14, Sec. 5:

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Fed.R.CIv.P. # 24 (c) Procedure: . . .

When the constitutionality of any statute of a State affecting the public interest is drawn into question in any action . . .

. . . should call the attention of the court to its consequential duty, but the failure to do so is not a waiver of any constitutional right otherwise timely asserted.

FRAP 28 (j) Citation of Supplemental Authorities. When pertinent and significant authorities come to the attention of a party after the party's brief has been filed, or after oral argument but before decision, a party may promptly advise the clerk of the court, by letter, with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall without argument state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

42 U.S.C. § 1983: Every person who, under color of any statute, regulation, custom, or usage, of any State or Territory or District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

42 U.S.C. § 1988: The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of the Title "CIVIL RIGHTS,"
and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and

enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against the law, the common law, as modified and changed by the constitution and the statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if is it of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1977, 1978, 1980, and 1981 of the Revised Statutes [42 U.S.C.S. §§ 1981-1983, 1985,

1986], . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.